Councilmember Mary M. Cheh

AN AMENDMENT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Date: December 20, 2022

Amendment offered by: Councilmember Cheh

To: Bill 24-228, the Fair Meals Delivery Amendment Act of 2022

Version: Final Reading

(a) The long title, lines 10-18, is amended by striking the word "platform" wherever it appears and inserting the word "service" in its place.

(b) Section 2 is amended as follows:
　　　　　(1) Paragraph (2), pages 1-2, lines 26-34, is amended as follows:
　　　　　　　　　(A) Strike the phrase "modalities or platforms offered by a third-party meal delivery platform, including any website, mobile application, or other internet service" and insert the phrase "third-party meal delivery platforms" in its place.
　　　　　　　　　(B) Strike the phrase "platform lists" and insert the phrase "service lists" in its place.
　　　　　　　　　(C) Strike the phrase "platform or" and insert the phrase "service or" in its place.
　　　　　　　　　(D) Strike the phrase "platform to" and insert the phrase "service to" in its place.
　　　　　(2) New paragraphs (2A) and (2B) are added to read as follows:
　　　　　"(2A) "Covered restaurant" means a restaurant that elects to receive only core delivery service.
　　　　　"(2B) "Discoverable" means that a restaurant's name is included in any lists or pages within a third-party meal delivery platform, including, but not limited to, the primary listing of restaurants on the platform's home screen, text-based search results, lists of restaurants corresponding to cuisine type or other categories, lists of a user's purchase history, and any other lists curated by the third-party meal delivery service.".
　　　　　(3) A new paragraph (6A) is added to read as follows:
　　　　　"(6A) "Third-party meal delivery service" means any person, corporation, partnership, or association that operates a third-party meal delivery platform.".

(c) Section 3, page 2-3, line 49-66, is amended as follows:

      (1) The section heading, page 2, line 49, is amended by striking the phrase "meals delivery platforms" and inserting the phrase "meal delivery service" in its place.

      (2) Subsection (a), page 3, lines 50-53, is amended by striking the word "platform" both times it appears and inserting the word "service" in its place.

      (3) Subsection (b), page 3, lines 54-58, is amended by striking the word "platform" both times it appears and inserting the word "service" in its place.

      (4) Subsection (c), page 3, lines 59-64, is amended as follows:

            (A) Paragraph (1) is amended by striking the word "platform" and inserting the word "service" in its place.

            (B) Paragraph (2) is amended by striking the word "platform" and inserting the word "service" in its place.

      (5) Subsection (d), page 3, lines 65-66, is amended by striking the phrase "platform that" and inserting the phrase "service that" in its place.

      (6) A new subsection (e) is added to read as follows:

"(e) A third-party meal delivery service shall not reduce the ranking of a covered restaurant, in any page, list, or search results in which the covered restaurant is included, relative to other restaurants, based on the level of commissions paid; provided, that this subsection shall not be construed to restrict a third-party meal delivery service's ability to use any method (that does not conflict with the restrictions in this subsection or any other applicable law) to determine the displaying and ordering of restaurants on a third-party meal delivery platform, including, but not limited to:

      (1) Offering preferential listing to restaurants that pay for advertising services;

      (2) Displaying restaurants based on a particular customer's search or purchase history, proximity to a customer's location, or other similar factors; and

      (3) Relying on an algorithm to implement any of these methods.".

(d) Section 4, pages 3-4, lines 67-76, is amended as follows:

      (1) The lead-in language is amended as follows:

            (A) Strike the phrase ", the third party meal delivery platform" and insert the phrase ", the third-party meal delivery service" in its place.

            (B) Strike the phrase "platform ("charges")" and inserting the phrase "service ("charges")" in its place.

      (2) Paragraph (1) is amended to read as follows:

"(1) The subtotal of charges and the price of each item, with the charges and prices updated as each item is selected, displayed on the online shopping cart, or in some other conspicuous location; and".

(e) Section 5, pages 4-5, lines 77-90, is amended as follows:

      (1) Subsection (a) is amended as follows:

            (A) Strike the phrase "third-party meal delivery platform" both times it appears and insert the phrase "third-party meal delivery service" in its place.

            (B) Strike the phrase "platform does" and inserting the phrase "third-party meal delivery service does" in its place.

      (2) Subsection (b) is amended as follows:

            (A) The lead-in language is amended by striking the word "platform" and inserting the word "service" in its place.

(B) Paragraph (2) is amended by striking the word "platform" and inserting the word "service" in its place.

Rationale:

This amendment would provide greater clarity regarding what constitutes a "core delivery service" under this legislation. As written, the bill requires meal delivery companies to offer "core delivery service" to restaurants in exchange for at most a 15% commission (5% if they don't provide delivery). The term "core delivery service" is defined in the bill to mean only that a restaurant opting for such service will be "discoverable" on the company's website or app. The term "discoverable" is not defined in the bill. The amendment would add a definition for "discoverable," to provide that it includes things like listing restaurants on a third-party meal delivery app's home screen, displaying restaurants within a customer's purchase history, and including restaurants in lists when customers browse restaurants by category.

In addition, to ensure that restaurants opting to receive only core delivery services do not lose out entirely on the benefits they are paying for, the amendment adds a provision restricting third-party meal delivery platforms from limiting those restaurants' ranking within a given list of restaurants in an app *solely based on* the amount of commission the restaurant is paying. This would prohibit platforms from, for instance, listing a restaurant at the very end of the list of restaurants within a category simply because the restaurant opted to only receive core delivery services. For example, if there are 25 restaurants in the category "Burgers," and 24 restaurants opt *out* of the core delivery service option while the 25th restaurant, Zeke's Burger Spot, opts *into* the core delivery service option, the amendment would prohibit a platform from listing Zeke's Burger Spot last in the Burgers category solely because the restaurant opted in to the core delivery service option.

This change is vital; without it, the system set up by this bill would allow meal delivery companies to create a "race to the bottom" scenario. Meal delivery companies could bury all of the restaurants opting for core delivery services at the bottom of any and every list they are included in, below every restaurant paying a higher commission than 15%. That would, in all likelihood, significantly reduce those restaurants' sales through the platforms and likely them to choose between withdrawing from the apps or opting into a higher commission tier. Meanwhile, as more and more restaurants opt into a higher tier (with, say, a 25% commission), the value of that higher tier would be diluted, because there would be fewer and fewer restaurants to be listed *ahead of*. So the 15% tier would turn into a sham offering, and the 25% tier would effectively become the most basic level of service offered by the meal delivery companies.

Importantly, this change would *not* prohibit third-party meal delivery companies from paying for advertising or displaying restaurants higher up in a list in exchange for payment. It would simply prevent them from listing an entire class of restaurants higher than another class, based on the level of commission the restaurants are paying.

The amendment also would not prohibit delivery companies from engaging in other practices to determine how to order a list of restaurants, including practices that rely on an

algorithm, even if those practices may result in certain restaurants opting for service at the 15% level being disadvantaged. For instance, using the example from above, if a third-party meal delivery company chooses to list restaurants by alphabetical order, the platform would not be prohibited from listing Zeke's Burger Spot last based on the fact that the letter Z is at the end of the alphabet. Or, if a delivery company wanted to display restaurants at the top of the home screen of their app based on a particular customer's historical preferences (e.g., the customer frequently orders burgers), the amendment would not prohibit the company from doing that.

Finally, the amendment includes one change for consumer protection. It would require meal delivery companies to display the price of a customer's order as the customer is adding items to their cart, rather than "on the product page," as the bill currently requires. This change is intended to prohibit "drip pricing," which is the practice of adding last-minute fees to the total price of a customer's delivery order just as the customer goes to their cart to check out. The practice is not only frustrating for customers, but also unfair and deceptive. It makes it much more difficult for customers to compare prices among different delivery apps. It also exploits basic psychology: Once a customer has finished adding items to their cart (believing they are making an informed decision based on the prices shown for each item), they will see that the final price is substantially higher. By that point, however, they will have already decided to place an order and so will accept the higher charges. By requiring meal delivery companies to show customers what the subtotal of their order will be—including fees—as they shop, this amendment would prohibit these deceptive practices and allow customers to make more informed choices.